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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,164	07/14/2003	James A. Rowe		9505

7590 06/28/2005  
Antoinette M. Tease, P.L.L.C.  
PO Box 51016  
Billings, MT 59105

EXAMINER

BUNIN, ANDREW M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/620,164

Applicant(s)

ROWE, JAMES A.

Examiner

Andrew M. Bunin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 8-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-7, drawn to a device including a tank that doesn't need to be filled with a therapeutic liquid, classified in class 128, subclass 205.22.
- II. Claims 8-21, drawn to a method of using and the device including a source or tank containing therapeutic liquid, classified in class 128, subclass 205.22.

Inventions of Group I and Group II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case, the Apparatus of Group I may include a tank filled with cyanide or some gas that doesn't exhibit a healing power while the tank of Group II must contain a liquid that has some type of therapeutic effect.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

During a telephone conversation with Ms. Antoinette Tease on Monday June 20<sup>th</sup>, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-7. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

The drawings are objected to because reference character "20" does not have a line or arrow designating the flexible section in Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Culjak (US 6003744) in view of Coontz (US 4976388). Culjak discloses a tank 20, a tank-holding assembly 5a, and at least one shoulder strap 11 attached to the pouch 6. However, Culjak hasn't disclosed a portion of the strap configured to flex during movement of the human carrier of the tank assembly to such a degree that the perceived weight of the tank is lessened. Coontz teaches a strap with a portion configured to flex (20) during movement of the human carrier of the tank assembly to such a degree that the perceived weight of the tank is lessened (column 1, lines 55-63). Coontz also teaches a strap comprising a multi-element strap as shown in Figures 1-6. Coontz further teaches the strap comprising a flexible section 20, a first structural section 22 having a first end that is capable of being secured to the tank pouch 6 and a second end secured to the flexible section, and a second structural section 24 having a first end that is

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capable of being secured to the tank pouch 6 and a second end secured to the flexible section. In addition, the structural sections (22 and 24) are fabricated from a material that has less elasticity compared with the material from which the flexible section is made (see Abstract). In addition, the flexible element 20 has a first length, the structural element 22/24 secured to the first flexible element having a section length, with the second length being greater than the first length (column 2, lines 60-65). Coontz further teaches the flexible element 20 is secured in overlaying relation to the structural element 22/24 (see Figure 6). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Culjak's lumbar supported carrier with the shoulder strap assembly taught by Coontz in order to provide comfort to user and "minimize the bouncing action" (column 1, line 63) during movement.

As for claims 5 and 6, although Coontz and Culjak don't explicitly disclose the flexible element and pouch as being fabricated from neoprene, Coontz teaches neoprene as being an elastomeric material used for strap member 15 (column 2, lines 40-45). In addition, the Applicant has failed to disclose the criticality in using this material over other flexible materials such as nylon. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to use the flexible material of neoprene for fabricating the pouch and flexible element.

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**Conclusion**

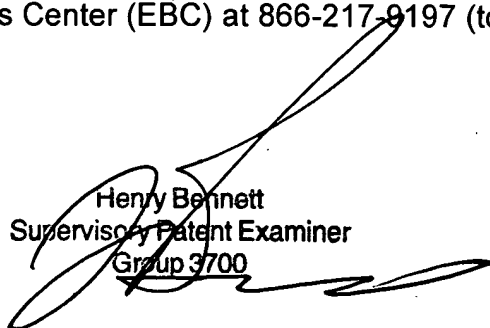
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: US 5507422, US 5529229, US 6341921, and US 5902073

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew M. Bunin whose telephone number is (571)272-4801. The examiner can normally be reached on Monday - Friday, 8 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571)272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
AMB  
6/24/05

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700

